

FEB - 8 1990

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

WARREN L. TADLOCK, CLERK

BY: ja
Deputy Clerk

In Re:)
)
RESORT DEVELOPMENT CORPORATION,)
)
Debtor.)
_____)

Case No. C-B-89-31068
Chapter 11

JUDGMENT ENTERED ON 2-8-90

**ORDER GRANTING MOTION OF HILTON HEAD RESORT FOUR SEASONS
CENTRE HORIZONTAL PROPERTY REGIME COUNCIL OF CO-OWNERS, INC.
FOR RELIEF FROM \$ 362 AUTOMATIC STAY**

This matter is before the court on the motion by Hilton Head Resort Four Seasons Centre Horizontal Property Regime Council of Co-Owners, Inc. ("Four Seasons") for relief from the automatic stay and the debtor's response to that motion. The court has concluded that the circumstances of this case provide adequate cause for allowing relief from stay and that Four Seasons' motion should therefore be granted.

Factual Background

Resort Development Corporation ("RDC"), the debtor in this bankruptcy case, was in the business of the development and construction of numerous condominium projects in various cities across the United States. Because of problems that allegedly arose out of the construction of these condominiums, RDC was named a defendant in at least twenty-seven lawsuits in both state and federal court. Four Seasons is a plaintiff in one of these suits which was filed against RDC and thirteen other named

defendants on August 11, 1989, in Beaufort County, South Carolina. On September 1, 1989, the debtor filed its current bankruptcy petition, and all of the pending suits against it, including the one brought by Four Seasons, became subject to the automatic stay. RDC has stated that the initiation of these numerous lawsuits was at least partially responsible for its decision to file its petition. Relief from stay was previously granted¹ for one of these suits to proceed in New Jersey, although the relief was limited to allow discovery only. Four Seasons now seeks modification of the stay for cause in order to proceed in its action against RDC in South Carolina for the limited purpose of establishing the amount of RDC's liability to it, and thus, the amount of its claim (which is unliquidated) in this proceeding.

Discussion

Four Seasons' request for relief from stay is governed by the provisions of 11 U.S.C. § 362(d)(1) which provide:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay -

(1) for cause....

The automatic stay serves as the fundamental protector of debtors under the Bankruptcy Code. H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 340, reprinted in, 1978 U.S. Code Cong. & Admin.

¹ See In re Resort Development Corp., No. C-B-89-31068 (February 7, 1990). At least part of the court's rationale for granting relief was that RDC was pursuing a claim as a third-party plaintiff in that action.

News 5787, 6296. The primary purpose of the stay is to protect the debtor and its estate from the actions of its creditors.

Id., at 5838. The automatic stay is

intended to prevent a chaotic and uncontrolled scramble for the debtor's assets in a variety of uncoordinated proceedings in different courts. The stay insures that the debtor's affairs will be centralized, initially, in a single forum in order to prevent conflicting judgments from different courts and in order to harmonize all of the creditors' interests with one another.

Fidelity Mortgage Investors v. Camelia Builders, Inc., 550 F.2d 47, 55 (2d Cir. 1976), cert. denied, 429 U.S. 1093 (1977). Thus, the basic policy of the stay is to protect the debtor's estate from "the chaos and wasteful depletion resulting from multifold, uncoordinated and possibly conflicting litigation." In re Frigitemp. Corp., 8 B.R. 284, 289 (S.D.N.Y. 1981).

Initially, the above reasoning would seem to support a continuation of the effect of the stay in this case. In fact, such a rationale is the primary argument put forth by the debtor for denying the motion of Four Seasons. It is the conclusion of the court, however, that such a policy argument cannot be used to protect the debtor under the particular circumstances of this case.

The policy of forcing creditors to bring all claims against the debtor in the bankruptcy court serves little purpose when applied to the Four Seasons litigation, and it would result in an inefficient allocation of resources of both the courts and the debtor. "The interest of judicial economy and the expeditious and economical determination of litigation for the parties" is a

relevant factor to consider in determining whether the stay should be lifted. In re Curtis, 40 B.R. 795, 800 (Bkrtcy. D. Utah 1984). By preventing Four Seasons from including RDC in its state court action, this court would be creating two identical suits - one to be tried against the thirteen remaining defendants in South Carolina and one to be tried against RDC in the bankruptcy court. Little basis can be shown to support such a division.

RDC's officers and directors are among the thirteen other defendants. These individuals are closely related to RDC and presumably share a common interest in defending against the Four Seasons action. In fact, RDC and its officers and directors are currently represented by the same counsel in that suit. In spite of their close relationship to RDC, bankruptcy court jurisdiction does not extend to these individuals or the other defendants in that suit, and Four Seasons' entire suit could not be brought before this court. Therefore, it would appear that significant pretrial discovery and other proceedings would need to be repeated by both sides of the dispute if Four Seasons is forced to proceed solely against RDC in the bankruptcy court. Such unwarranted duplication should be avoided.

The debtor also argues that a grant of relief from stay will cause it undue hardship. The court rejects this assertion as well. The debtor's principal place of business and the location where the debtor's officers, directors and employees reside is Columbia, South Carolina. The cost of litigation in Beaufort

County would not be measurably different from the costs associated with suit in this court and, in fact, they actually may be less. Moreover, there would be no undue burden or inconvenience placed upon the debtor if forced to litigate in Beaufort County, as it is approximately the same distance from Columbia as Charlotte.² Finally, the debtor's participation in the state court action would allow it to reduce its costs further by sharing expenses with the other co-defendants.

In a Chapter 11 case, one of the purposes of the stay is to facilitate reorganization. Central Trust Co. v. Mr. D. Realty (In re Mr. D. Realty), 27 B.R. 359 (Bkrtcy. S.D. Ohio 1983). In the present case, however, the court has some doubt whether RDC's reorganization can be said to be one "that is in prospect." United Sav. Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd., 484 U.S. 365, 108 S. Ct. 626, 98 L.E.2d 740 (1988). RDC is apparently engaged in an attempt to hold twenty-six lawsuits³ at bay while it pursues one lawsuit in New Jersey with the hope of securing a judgment to fund its reorganization. At the hearing, even the attorneys for the debtor indicated that at best, RDC hoped to resume developing condominium projects at some future time. There was no evidence that RDC is currently engaged in any development projects. These facts add much uncertainty to RDC's

² It should be noted that other parties in the South Carolina suit have moved for a change of venue to Columbia, the site of the debtor's principal offices.

³ The court does not express any opinion on the propriety of granting relief from stay as to any of the other lawsuits.

prospect for reorganization, and they tend to support an order for relief from stay.

While the policy and purpose of the automatic stay is to provide protection for the debtor and its estate, and to allow time for the debtor to reorganize, the circumstances surrounding the reorganization of RDC suggest that the application of the automatic stay to the suit by Four Seasons is inappropriate.

It is therefore ORDERED that:

1. The motion of Hilton Head Resort Four Seasons Centre Horizontal Property Regime Council of Co-Owners for relief from stay is granted;

2. The automatic stay is modified to allow Four Seasons to obtain a final judgment in Beaufort County as to the liability and amount of damages, if any, due from RDC; and

3. In all other respects, the stay will remain in effect requiring any effort to enforce or collect on such judgment to be confined to RDC's bankruptcy case.

This the 8th day of February, 1990.



George R. Hodges
United States Bankruptcy Judge